1 MONDAY, MARCH 16, 1953

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10768

TRANSAMERICA CORPORATION, PETITIONER

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT

Petition to review and set aside the order of the Board of Governors of the Federal Reserve System

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[Received and filed May 27, 1952. Ida O. Creskoff, Clerk.]

2 IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10768

TRANSAMERICA CORPORATION, PETITIONER

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT

Petition to review and set aside the order of the Board of Governors of the Federal Reserve System

To the Honorable the Judges of the United States Court of Appeals for the Third Circuit:

Transamerica Corporation (hereinafter called Transamerica) presents this petition to review and set aside the order entered by the Board of Governors of the Federal Reserve System (here-

inafter called the Board) and, in support thereof, respectfully represents to this Court as follows:

3 I. THE NATURE OF THE PROCEEDING

1. Transamerica is a corporation organized under the laws of the State of Delaware. It is engaged in the business of investment in stocks of various corporations including banks, insurance companies and industrial enterprises. Approximately one-half of its assets consists of bank stocks. Its holdings of bank stocks, which were the subject of inquiry in this proceeding, include a minority interest (now 5.6 percent) in Bank of America National Trust & Savings Association (hereinafter called Bank of America), the head office of which is in San Francisco, California, a minority interest in Citizens National Trust and Savings Bank of Los Angeles, and majority interests in each of 46 banks located in Arizona, California, Nevada, Oregon and Washington.

2. This proceeding was initiated by a complaint issued by the Board on June 24, 1948, and amended on July 19, 1949, charging Transamerica with violation of Section 7 of the Clayton Act. (38 Stat. 731, 15 U. S. C. § 18.) On December 7, 1948, Transamerica moved that the Board dismiss the complaint on the ground that it lacked jurisdiction, since Section 7 was never intended to apply to bank stockholdings. This motion was denied on January 17, 1949. Hearings were commenced on December 7, 1948, before a Governor of the Board who, although lacking any legal training, was designated as a Hearing Officer. They were completed on December 15, 1950. On June 13, 1951, the Hearing Officer issued a Recommended Decision asking the Board to determine that Transamerica's acquisition, holding and use of the stocks of the banks referred to in paragraph 1 above were in violation of

4 Section 7. On September 13, 1951, Transamerica filed exceptions—based in part on the unsupported character of the findings and the arbitrary conduct of the hearing—and renewed its motion to dismiss originally made on December 7, 1948. Oral argument on the motion and exceptions was had on December 11, and 12, 1951, and on March 27, 1952, the Board issued the orders, review of which is now sought. The Board denied all of Transamerica's exceptions, denied its motion to dismiss, and adopted *in toto* the text of the Hearing Officer's Recommended Decision. The Board's "Findings as to the Facts, Conclusion and Order" were joined in by three of the seven members of the Board including the Hearing Officer, whose recommendations and rulings were the subject of Transamerica's specific exceptions, and who participated over Transamerica's objection and cast the decisive vote. Two Governors dissented, and two did not participate in the decision.

3. The orders which Transamerica here asks the Court to review and set aside direct Transamerica to cease and desist from violating Section 7 and further direct it to divest itself of all of the stock which it holds in each of the banks referred to in paragraph 1 above, except its 5.6% minority interest in Bank of America. The drastic and sweeping character of this divestiture order may be seen from the fact that the 46 stock interests to be divested are carried on Transamerica's books at a figure over $28,000,000, and constitute about 25% of all its investments.

II. Facts and Statutes Upon Which Jurisdiction and Venue Are Based

1. This petition is filed pursuant to Section 11 of the Clayton Act (38 Stat. 734, 15 U. S. C. § 21), which provides, in part, that any party required by an order of the Board to cease and desist from a violation charged may obtain review of such order by applying to the Court of Appeals of the United States within any circuit where such person resides.

2. Transamerica satisfies the foregoing jurisdictional and venue requirements. As a corporation organized under the laws of the State of Delaware it resides within this circuit.

III. Points on Which Transamerica Intends to Rely

1

(a) The Board has no jurisdiction to issue the orders which Transamerica seeks to have set aside. Section 7 was never intended to apply to the acquisition of stocks in banks, as is demonstrated by the language of the Act, its legislative history, the pattern of banking legislation both before and since the Act, and the Board's own long-standing interpretation of the Act.

(b) The Board should have granted Transamerica's motion to dismiss the complaint made on December 7, 1948, and renewed on September 13, 1951.

2

(a) The facts of record and the findings of the Board itself disclose that 38 of the banks named in its orders were not, at the time Transamerica acquired their stock, in actual or potential competition with any other bank in which Transamerica owned stock.

(b) Moreover, there was no proof, and the Board did not find, that any of the remaining banks named in its orders were in actual or potential competition with any other bank in which Transamerica owned stock.

6 (c) The orders, therefore, must be set aside because Section 7 does not prohibit stock acquisitions in corporations that are not in actual or potential competition with one another.

3

(a) The facts of record demonstrate that there has not been, and that there probably will not be, any substantial lessening of competition between the banks in which Transamerica owns stock, and the Board has made no findings to the contrary.

(b) The orders must, therefore, be set aside because there can be no finding that Section 7 has been violated by the acquisition of stock in banks in the absence of factual proof that such stock acquisitions have brought about, or probably will bring about, a substantial lessening of competition between the banks whose stock has been acquired.

(c) The Board's findings that Transamerica has sought to secure control of Citizens National Trust & Savings Bank of Los Angeles and its branches, and that it has the purpose to acquire control of that bank are contrary to the evidence on the whole record and unsupported by substantial evidence.

(d) The Board's finding that the effect of Transamerica's "holding and use" of the stocks ordered divested "may be to substantially lessen competition and restrain commerce in commercial banking in the States of California, Oregon, Nevada, Arizona, and Washington, and tend to create a monopoly in such line of commerce in said area" is contrary to the evidence on the whole record and unsupported by substantial evidence.

7 4

(a) The Board failed and refused to make inquiry into the factors and circumstances relating to competition or tendency to create a monopoly in the provision of banking services and, in particular, it failed and refused to appraise the effect of Transamerica's acquisitions and holding of bank stocks upon competition and monopoly—or what the courts have described as the probable effect of the challenged stock acquisitions upon the "public interest."

(b) The Board erroneously excluded relevant and probative evidence demonstrating the absence of any prejudicial effect upon the "public interest," including offers to prove:

(1) The strength and character of existing competition.

(2) Freedom of entry into the business of providing banking services.

(3) The quantity and quality of banking services available to the public and the high and growing degree of competition between concerns providing such services.

(4) The intention, purposes, circumstances, and consequent probable effects underlying Transamerica's various separate acquisitions of bank stock.

(5) The complete absence of characteristics that might indicate developing monopoly in the provision of banking services, such as interest rate rigidity, excess of facilities, or deterioration of services.

8 (c) Moreover, the Board failed and refused to give any consideration to factors peculiar to the provision of banking services. As the dissenting opinion of Governor Powell pointed out, for example, "The record makes it clear, and the Board's Solicitor has never denied that keen competition is present in the five states," and "over-banking has been a curse in past years," and the supervisory banking authorities have had to guide their intensive and continuing regulation of banking accordingly. These various factors differentiate banking from other types of business activity and require an especially informed and precise appraisal in a Section 7 proceeding, which the Board did not make. The Board excluded evidence offered by Transamerica, which would have demonstrated certain of the competitive factors peculiar to the banking business, and thereby committed serious and prejudicial error.

5

(a) The orders must be set aside because the Board, in determining whether Transamerica's bank stockholdings may lessen competition or tend to create a monopoly in violation of Section 7, relied almost exclusively on percentages of "market occupancy." Thus, the Board stated that the "controlling facts" in its decision were the percentages of commercial banking offices, deposit liabilities, loans, and deposit accounts allegedly controlled by Transamerica.

(b) Market occupancy percentages are a most inadequate measure of the probable effect of Transamerica's stock

9 acquisitions upon competition or monopoly because, among other reasons, they reflect internal growth (which accounts for 85 to 90 percent of the figures relied upon by the Board), and growth through establishment of new offices and asset acquisitions, none of which falls within the purview of Section 7. Moreover, the percentages relied upon by the Board have the effect of charging Transamerica with responsibility for bank failures and mergers with which it concededly had no connection whatsoever.

(c) The percentages relied upon by the Board reflect only num-

bers of unrelated banking offices and deposit accounts, and totals of deposits and loans. In the absence of a qualitative analysis going to the size of banking offices, kinds of demand deposits, types of loans and character of deposit accounts, which analysis the Board refused to undertake, mere numbers and totals afford no accurate measure of competitive significance or monopoly power. They were correctly characterized in the dissenting opinion of Governor Powell as "purely a statistical compilation without validity."

6

(a) The Board's findings as to the existence of a "Transamerica group" of banks under the control and direction of Transamerica, and that Bank of America, with 85 percent or more of the deposits, loans and banking premises attributed to Transamerica, was one of such a group, all of which findings are concededly basic to its conclusion that Section 7 has been violated, are contrary to the evidence on the whole record, and unsupported by substantial evidence.

(b) Transamerica's holdings of bank stocks were acquired solely for investment in accordance with the exception provided in Section 7, and the Board's finding to the contrary is against the weight of the evidence on the whole record, and unsupported by substantial evidence.

(c) Transamerica has never, in fact, controlled or directed the policies, activities or operations of Bank of America in which it now holds a 5.6 percent interest, and does not now control or direct or have any power to control or direct such policies, activities or operations. The Board's conclusion to the contrary is against the weight of the evidence on the whole record, is unsupported by substantial evidence, and is inconsistent with the Board's own finding that Transamerica does not control the day to day details of operation of Bank of America.

7

(a) The Board excluded evidence offered by Transamerica which would have demonstrated the intense, continuing and effective competition between "commercial banks" and other types of institutions in the provision of banking services, and would have established that "commercial banking" is not a distinct "line of commerce" within the meaning of Section 7, thereby committing serious and prejudicial error.

(b) The Board's findings respecting the nature of "commercial banks," the character of their operations and the degree of dominance of the market enjoyed by them are contrary to the evidence on the whole record, and unsupported by substantial evidence.

(c) The Board's finding that "commercial banking" constitutes a distinct "line of commerce" within the meaning of Section 7 is contrary to the evidence on the whole record, and is unsupported by substantial evidence.

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(a) The Board confined its entire inquiry into lessening of competition and tendency to create a monopoly to those "commercial banks" having head offices located in Arizona, California, Nevada, Oregon, and Washington. Its selection of this segment of the United States and this limited group of banks from among those doing business in that area as the basis for its inquiry under Section 7 was completely arbitrary, and the entire record contains no evidence that the segment is economically distinct or constitutes the area of effective competition for any of the banks involved in this proceeding.

(b) The Board excluded evidence offered by Transamerica which would have established the appropriate geographical areas in which banks involved in this proceeding do compete and the banks with which they compete with respect to the various services offered by them, thereby committing serious and prejudicial error.

9

(a) The hearing was conducted in an arbitrary and discriminatory manner by the Hearing Officer, and the Board approved his conduct, thereby depriving Transamerica of its constitutional right to a fair hearing.

(b) Transamerica was deprived of a fair hearing because improper and arbitrary restrictions were put on its right to cross-examination.

(c) Transamerica was deprived of a fair hearing because
12 the Hearing Officer did not apply the same evidentiary standards to Transamerica as he did to counsel for the Board, as is shown, among other things, by the fact that evidence was received when offered by the Board's counsel and evidence of identical character was excluded when offered by Transamerica.

(d) Transamerica was deprived of a fair hearing because evidence was excluded which would have rebutted inferences drawn by the Board from the misleading statistics upon which reliance was placed, and which would have refuted the allegations of the complaint.

(e) Transamerica was deprived of a fair hearing because the Board's lack of the power of subpoena deprived Transamerica of the right to compel witnesses to testify, and the Hearing Officer re-

fused to assist Transamerica in its efforts to obtain the appearance of important witnesses who were unwilling to testify voluntarily.

(f) Transamerica was deprived of a fair hearing because the major portion of the evidence received in support of the complaint should have been excluded since it was obtained in the course of examinations conducted under the visitorial powers of the Board and of other bank supervisory agencies, and was, therefore, privileged.

(g) Transamerica was deprived of a fair hearing because a substantial portion of the evidence received in support of the complaint was not "reliable, probative and substantial evidence," as required by Section 7 (c) of the Administrative Procedure Act (60 Stat. 241, 5 U. S. C. §1006(c)).

13 10

(a) The Board and its Hearing Officer should have granted Transamerica's request that the Governor of the Board who had acted as Hearing Officer be disqualified and not permitted to sit in judgment on Transamerica's exceptions to his findings and recommendations and to his conduct of the hearing.

(b) The serious prejudice to Transamerica resulting from the refusal by the Board and the Hearing Officer himself to disqualify the Hearing Officer from participation in the review of his own decision is seen in the fact that the final decision rendered by the Board, which adopted all of the findings and recommendations of the Hearing Officer, was rendered by a margin of 3 to 2, with the Hearing Officer casting the decisive vote.

11

The orders must be set aside because the Board erred in failing to uphold the exceptions filed on behalf of Transamerica under date of September 13, 1951.

IV. The Relief Prayed

Wherefore, Transamerica prays that:

1. A copy of this petition be forthwith served by the Clerk of this Court upon the Board of Governors of the Federal Reserve System, in accordance with Rule 18 (1) of this Court.

2. Said Board be required forthwith, in accordance with the requirements of Section 11 of the Clayton Act, to certify and file in this Court a transcript of the record in the proceedings entitled "In the Matter of Transamerica Corporation."

14 3. This Court specifically direct that the filing of this petition shall operate as a stay of the effectiveness of the

Board's order in the above-mentioned proceedings dated March 27, 1952, a copy of which is annexed to this petition.

4. This Court review and set aside the Board's orders dated March 27, 1952, in the above-mentioned proceedings.

5. This Court grant such other and further relief as it may deem appropriate.

Respectfully submitted.

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JOHN LORD O'BRIAN,
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Of Counsel.

MAY 27, 1952.

15 UNITED STATES OF AMERICA BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

IN THE MATTER OF TRANSAMERICA CORPORATION

* * * * *

ORDER

It is ordered that respondent, Transamerica Corporation, a corporation, cease and desist from violating the provisions of section 7 of "an Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (38 Stat. 731, 15 U. S. C. § 18), in the manner set out in the findings as to the facts herein; and it is specifically ordered that said respondent divest itself fully and completely of all capital stock, whether directly or indirectly owned or controlled by it, of each of the following named banks:

IN CALIFORNIA

Central Bank, Oakland,
The First National Bank of Garden Grove, Garden Grove,
Bank of Pinole, Crockett,
Central Bank of Calaveras, San Andreas,
The First National Bank of Fairfield, Fairfield,
The Temple City National Bank, Temple City,
The First National Bank of Weed, Weed,
First Trust and Savings Bank of Pasadena, Pasadena,

The First National Bank of Bellflower, Bellflower,
16 First National Bank in Corcoran, Corcoran,
The First National Bank of Los Altos, Los Altos,
Bank of Newman, Newman,
First National Bank in Santa Ana, Santa Ana,
First National Trust and Savings Bank of Santa Barbara, Santa Barbara,
Bank of Tehachapi, Tehachapi,
The First National Bank of Crows Landing, Crows Landing,
The First National Bank of San Jacinto, San Jacinto,
Farmers & Merchants Bank of Watts, Los Angeles,
Citizens National Trust and Savings Bank of Los Angeles, Los Angeles,
The First National Bank of Mountain View, Mountain View,
The First National Bank of Oakdale, Oakdale,
First National Bank in Turlock, Turlock,
Bank of Beaumont, Beaumont,
First National Bank in Delano, Delano,
American Commercial & Savings Bank, Moorpark,
Stanislaus County Bank, Oakdale,

IN OREGON

The First National Bank of Portland, Portland,
The First National Bank of Forest Grove, Forest Grove,
Coolidge & McClaine, Silverton,
Moreland-Sellwood Bank, Portland,
Clatsop County Bank, Seaside,
The First National Bank of Cottage Grove, Cottage Grove,
The First National Bank of Prineville, Prineville,
The Scio State Bank, Scio,
Bank of Sweet Home, Sweet Home,
17 The First National Bank of Eugene, Eugene,
Benton County State Bank, Corvallis,
Carlton State & Savings Bank, Carlton,
Yamhill State Bank, Yamhill,
Monroe State Bank, Monroe,
The First National Bank of Lebanon, Lebanon,
State Bank of Malheur County, Ontario,

IN NEVADA

First National Bank of Nevada, Reno,
Farmers' Bank of Carson Valley (Inc.), Minden,
Bank of Nevada, Las Vegas,

IN ARIZONA

First National Bank of Arizona, Phoenix,

IN WASHINGTON

National Bank of Washington, Tacoma;

that said divestment be made in good faith, and that none of the capital stock of any of said banks be sold or transferred directly or indirectly to any presently existing or later organized or acquired subsidiary or affiliate of respondent, or to any director, officer, employee, agent, or nominee thereof, or to any person acting for or in behalf, or subject directly or indirectly to the control, of respondent or of any of its subsidiary or affiliated companies or of any director, officer, employee, agent, or nominee thereof; that said divestment be made without using or attempting to use any of the said capital stock in any manner in directly or indirectly acquiring or conveying to others any of the assets of any of said banks; and that said divestment be made in such manner that each of said banks may continue to operate as a going con-
18 cern wholly independent of respondent; that action to bring about said divestment be initiated by respondent within 90 days after service of this order upon it, and that said divestment be completed within two years and 90 days after said service of this order.

IT IS FURTHER ORDERED that within 90 days after the service of this order upon it, respondent file with this Board a report in writing showing in detail the action which it has then taken, and which it intends to take, in compliance with this order; that within one year after the expiration of said 90 days respondent file with this Board a report in writing showing in detail the action which it has then taken, and which it intends to take, in compliance with this order; and that within two years and 90 days after said service of this order respondent file with this Board a report in writing showing in detail the manner and form in which it has completed compliance with this order.

This 27th day of March, 1952.

By the Board.

(Signed) S. R. CARPENTER,
Secretary.

[SEAL]

19 MONDAY, MARCH 16, 1953

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10768

TRANSAMERICA CORPORATION, PETITIONER

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT

Application for leave to adduce additional evidence

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[Received and filed May 27, 1952. Ida O. Creskoff, Clerk.]

20 IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10768

TRANSAMERICA CORPORATION, PETITIONER

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT

Application for leave to adduce additional evidence

To the Honorable the Judges of the United States Court of Appeals for the Third Circuit:

Transamerica Corporation (hereinafter called Transamerica) presents this application for leave to adduce additional evidence upon a hearing before the Board of Governors of the Federal Reserve System (hereinafter called the Board) and, in support thereof, respectfully represents to this Court as follows:

1. Transamerica is filing simultaneously with this appli-
21 cation a petition to review and set aside orders of the Board issued March 27, 1952, in proceedings before the Board entitled "In the Matter of Transamerica Corporation."

2. Among the "Points on Which Transamerica Intends to Rely" in said petition are listed numerous references to the exclusion of evidence offered by Transamerica in the above-mentioned proceedings. This evidence was relevant and material and the failure to adduce such evidence was due solely to the erroneous rulings of the Hearing Officer in excluding it, and of the Board in affirming his rulings. Transamerica took specific exceptions to the rulings of the Hearing Officer excluding such evidence and these exceptions were specifically overruled by the Board.

3. Section 11 of the Clayton Act, 38 Stat. 734, 15 U. S. C. § 21, as amended, pursuant to which Transamerica has filed its petition for review, contains the following provision:

"If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission or Board, the court may order such additional evidence to be taken before the Commission or Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission or Board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if
22 supported by substantial evidence, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order, with the return of such additional evidence."

4. The evidence erroneously excluded by the Board consists of the following:

(1) Evidence which would establish the geographical area in which banks involved in this proceeding compete with respect to the various services they offer.

(2) Evidence which would establish that banks involved in this proceeding receive substantial competition in all categories of their business from many effective competitors other than banks offering services substantially identical with those of such banks, and which would prove the nature and extent of such competition, the identity of the competitors and the changes which have taken place in the quantity and quality of such competition.

(3) Evidence which would prove the nature and effect of other factors, which are more important than acquisitions, upon the growth, development, and competition of banks, including particularly those banks involved in this proceeding, and which would establish that the nature and amount of services provided by banks are continually changing and that they change in accord-

ance with (a) the nature and amount of bank and nonbank competition; (b) management policies; and (c) the aggressiveness with which particular services are offered either by banks or by their nonbank competitors.

23 (4) Evidence which would prove that Bank of America N. T. & S. A., in which Transamerica holds a minority interest of 5.6%, and the banks in which Transamerica has a majority interest grew as a result of providing a greater variety of services to a greater number of people, and by constant effort to render services which were better in quality and cheaper in cost than those offered by competitors.

(5) Evidence which would prove (a) that Transamerica's principal purpose in acquiring stocks of banks has been to obtain and hold profitable and diversified investments by aiding in the creation and development of state-wide branch banks along sound business lines; (b) the business advantages of branch banking both to public and to stockholders, and the experience of the banks named in the complaint in demonstrating those advantages; and (c) the pattern of mergers and consolidations in the banking field showing the increasing general trend toward branch banking in consequence of the general recognition of those advantages.

(6) Evidence which would prove that the intent and effect of the transactions by which Bank of America N. T. & S. A. and Transamerica's majority-owned banks have extended their facilities have been to give more and better service to more people over a wider area.

(7) Evidence which would prove the reasons why the assets or stock of certain banks were acquired and the circumstances surrounding the rejection of proposals by persons wholly

24 unrelated to Transamerica that the stock or assets of particular banks be acquired.

(8) Evidence which would prove that there has been and is no tendency to create a monopoly or lessening of competition in the banking business in the five states of Arizona, California, Nevada, Oregon and Washington, or elsewhere.

(9) Evidence which would prove facts explaining or qualifying facts proved by counsel for the Board or that certain of his contentions were unsound, invalid or unwarranted, including evidence (a) that Transamerica does not control Bank of America N. T. & S. A.; (b) that Transamerica had a valid investment purpose in acquiring stock of Citizens National Trust and Savings Bank of Los Angeles and never sought to control that bank; (c) that actual or prospective public injury is essential to the existence of a tendency toward monopoly or a substantial lessening of competition; (d) that a monopoly of banking is improbable, if not impossible; (e) that Bank of America and Transamerica's

majority-owned banks have grown in a manner consistent with and similar to the development of the entire banking structure of the United States.

(10) Evidence excluded by arbitrary and discriminatory rulings, under which evidence of identical character was admitted when offered on behalf of the Board.

Wherefore Transamerica respectfully applies to this Court for:

25 1. Such relief with respect to the adducing of additional evidence in this proceeding before the Board of Governors of the Federal Reserve System as may be appropriate in the light of the action taken by this Court on the petition for review filed simultaneously herewith.

2. Such other and further relief as it may deem appropriate.

Respectfully submitted.

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MAY 27, 1952.

26 MONDAY, MARCH 16, 1953

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10768

TRANSAMERICA CORPORATION, PETITIONER

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT

Amendment to application for leave to adduce additional evidence

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NOVEMBER 24, 1952.

[Received and filed November 24, 1952. Ida O. Creskoff, Clerk.]

27 IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10768

TRANSAMERICA CORPORATION, PETITIONER

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT

Amendment to application for leave to adduce additional evidence

Transamerica Corporation hereby amends its Application for Leave to Adduce Additional Evidence, filed in this proceeding on May 27, 1952, by adding thereto on page 5 of the printed Application, prior to the prayer for relief, the following paragraph:

5. Evidence of events occurring since the Board rendered its decision and since the Application was filed in this Court, negating the Board's finding that Transamerica controls Bank of America, as follows:

28 (1) Evidence that Mr. L. M. Giannini died on August 19, 1952, and that there are no longer any common officers or directors between Transamerica and Bank of America.

(2) Evidence that on October 20, 1952, Transamerica sold 1,341,085 shares of Bank of America stock to the public; that neither Transamerica nor any of its subsidiaries now owns any stock in Bank of America whatsoever; and that Transamerica's long-range program to dispose of all its interest in Bank of America has been completed.

Respectfully submitted.

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JOHN LORD O'BRIAN,
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NOVEMBER 24, 1952.

29 UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10768

TRANSAMERICA CORPORATION, PETITIONER

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT

Petition to review the order of the Board of Governors of the Federal Reserve System

Argued March 16, 1953

Before MARIS, GOODRICH and KALODNER, *Circuit Judges.*

OPINION OF THE COURT

(Filed July 16, 1953)

By MARIS, *Circuit Judge.*

Transamerica Corporation, a corporation of Delaware, has petitioned this court to review an order of the Board of Governors of the Federal Reserve System entered against it under Section 11 of the Clayton Act to enforce compliance with Section 7 of the Act. The Board's complaint was issued June 24, 1948, charging Transamerica with having violated Section 7 in that for many years it and its predecessors have continuously and systematically been acquiring the stocks of independent commercial banks located in the five States of California, Oregon, Nevada,
30 Washington and Arizona, and that the effect of such acquisitions may be to substantially lessen competition, restrain commerce or tend to create a monopoly.

Hearings were held on the Board's complaint before a member of the Board as hearing officer. The hearing officer submitted recommended findings to the Board to which exceptions were filed. After hearing the exceptions the Board, two members dissenting, on March 27, 1952, entered the order here challenged, finding that Transamerica's acquisitions and ownership of the stocks of the various banks named in the complaint constituted a violation of Section 7 of the Clayton Act and requiring Transamerica to divest itself of all such stocks, except that of Bank of America National Trust and Savings Association, within an overall period of two years and ninety days.

At the outset we are confronted with a question of jurisdiction. Transamerica sought to have the Board's complaint dismissed and here seeks to have it set aside upon the ground that under Section 11 of the Clayton Act the only authority given to the Board is to enforce compliance with those sections of the Act which are "applicable to banks, banking associations and trust companies," and that the provisions of Section 7 here sought to be enforced do not apply to such institutions. To determine the validity of this contention we turn first to the language of Section 7 of the Clayton Act, which is as follows:

"SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

31 "No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

"This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition. * * *"[1]

It will be seen that the significant language of Section 7 is that "No corporation shall acquire * * * the stock * * * of two or more corporations engaged in commerce where the effect of such acquisition * * * may be" that denounced by the section. This language is so clear and unambiguous as to leave no room for con-

[1] 38 Stat. 730, 731–732, 15 U. S. C. (1946 Ed.), § 18. Section 7 was amended in 1950. 64 Stat. 1125. The amendment is prospective only. The proceedings here in question were conducted and the order under review was entered under Section 7 as it existed prior to the amendment.

struction.[3] Its sweep includes all "corporations engaged in commerce" without exception. The Board found, and Transamerica does not contest the finding, that the commercial banks the stocks of which are here involved were engaged in interstate commerce.[3] Those banks must, therefore, be held to be within the purview of Section 7.

32

Transamerica argues that Congress has not in the past regulated the banking business by legislation directed to corporations generally but rather by special banking legislation and it says that the legislative history indicates that Congress did not intend to depart from this practice in the Clayton Act. In particular Transamerica points to Section 8 of the Act which deals specifically with interlocking directors of banks.

It may readily be admitted that Congress has in the past customarily dealt with the banking business by special legislation directed solely to that end. This it did under its fiscal and currency powers.[4] Indeed more than 100 years ago the Supreme Court had held that banking was not commerce.[5] It is, therefore, doubtless true that the members of Congress in enacting Section 7 of the Clayton Act in 1914 did not specifically contemplate that "corporations engaged in commerce" would include banks. We find nothing in the legislative history, however, to indicate that Congress did not intend by Section 7 to exercise its power under the commerce clause of the Constitution to the fullest extent. The avowed purpose of the Clayton Act was to supplement the Sherman Act by arresting in their incipiency those acts and practices which might ripen into a violation of the latter act. Since the general language of the Sherman Act was designed by Congress "to go to the utmost extent of its Constitutional power in restraining trust and monopoly agreements"[6] the supplementary general language of the Clayton Act was undoubtedly intended to have the same all inclusive scope.

33

We turn then to the merits of the case. The Transamerica group had its origin in 1904 when A. P. Giannini organized the Bank of Italy (now Bank of America National Trust and Savings Association) with headquarters in San Francisco. This bank is said to be the largest bank in the world, due principally to the fact that more than 550 independent banks and branches in the State of California have been acquired and either converted into branches of Bank of America or merged or consolidated with it.

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[3] Lewis v. United States, 1875, 92 U. S. 618, 621; Standard Co. v. Magrane-Houston Co., 1922, 258 U. S. 346, 356.

[3] This finding was clearly correct. National Labor Relations Board v. Bank of America, etc., 9 Cir. 1942, 130 F. 2d 624, 626, cert. den., 318 U. S. 791, 792; United States v. South-Eastern Underwriters Association, 1944, 322 U. S. 533.

[4] McCulloch v. Maryland, 1819, 17 U. S. 316; Osborn v. Bank of United States, 1824, 22 U. S. 738; Farmers' and Mechanics' National Bank v. Dearing, 1875, 91 U. S. 29.

[5] Nathan v. Louisiana, 1850, 49 U. S. 73.

[6] United States v. South-Eastern Underwriters Association, 1944, 322 U. S. 533, 558.

Until 1917 these acquisitions were made by individual officers of the bank, who pledged their personal credit when stock of an independent bank was being purchased. In that year Stockholders Auxiliary Corporation, a Transamerica predecessor, was organized and this company thereupon acted as purchaser of independent banks in California destined for inclusion within the Bank of America system.

In 1918 another corporation, Bancitaly Corporation was organized by A. P. Giannini, the largest stockholder of which was Stockholders Auxiliary Corporation. This company acquired the stocks of various banks located in New York City and certain foreign countries. Later on it also acquired stock interests in California banks. In 1924 still another corporation was formed called Americommercial Corporation and it, too, acquired controlling stock interests in California banks. In 1928 Transamerica Corporation, the petitioner here, was organized to take over stock control of Bank of America and its affiliated companies. Since that time Transamerica has acted as purchaser of independent banks in California for Bank of America.

In 1930 Transamerica acquired The First National Bank of Portland, Oregon, which has since become the principal
34 Transamerica branch banking system in that state. In 1934 it acquired the First National Bank in Reno, Nevada, the name of which has subsequently been changed to First National Bank of Nevada. In 1936 it acquired the National Bank of Tacoma, Washington, the name of which was later changed to National Bank of Washington. In 1937 it acquired the First National Bank of Arizona at Phoenix, the Phoenix National Bank and the Phoenix Savings Bank & Trust Company (the latter being an affiliate of the Phoenix National Bank). The Phoenix National Bank and the First National Bank of Arizona at Phoenix were later consolidated as the First National Bank of Arizona. Numerous subsequent acquisitions of independent banks were made by Transamerica in these four states, most of which have been converted into branches of the banks just mentioned.

Commencing in 1937 Transamerica, which then held substantially all the stock of Bank of America, began a program of voluntary disposal of these holdings. In that year it distributed 58% of this stock to its own shareholders. By 1948 Transamerica's holdings of Bank of America stock had been reduced to 22.88% and by 1951 to 7.66%. On October 20, 1952, the last of the stock was disposed of so that today Transamerica has no stock interest whatever in Bank of America. Also upon the death of L. M. Giannini on August 19, 1952, the two corporations ceased to have any

director in common.[7] The Board, nonetheless, in its findings of fact included Bank of America in the Transamerica banking group, along with 47 majority owned banks which Transamerica had acquired in the five states, since it regarded Transamerica as still exercising effective control over Bank of America in spite of its then comparatively small stock interest. The Board did not include Citizens National Trust and Savings Bank of Los Angeles, in which Transamerica also has a minority stock interest,
35 however, since it did not find that Transamerica exercises control over that bank.

The Board's findings of fact set forth the growth, by years, in banking offices, deposits and loans of the Transamerica banking group. This growth has been steady. The Transamerica group controls approximately 645 or 41% of all commercial-banking offices in the five-state area. In addition the Transamerica group holds approximately 39% of all commercial-bank deposits and approximately 50% of all commercial-bank loans in the five-state area.[8] On the basis of such overall figures as these and without any findings as to the competitive effect of Transamerica's bank acquisitions in the communities in which the banks operate the Board reached its conclusion that the acquisitions violated Section 7 of the Clayton Act and accordingly called for the order of divestment here under review.

It will be recalled that Section 7 makes unlawful the acquisition of the stock of two or more corporations engaged in interstate commerce where its effect "may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, * * * or tend to create a monopoly of any line of commerce." The contention of Transamerica is that the Board's findings wholly fail to furnish support to the conclusion that the effect of Transamerica's acquisitions of bank stocks may be to substantially lessen competition between the acquired banks or that those acquisitions may tend to create a monopoly in the banking business.

We think that Transamerica's contention with respect to substantial lessening of competition must be sustained. The ban imposed by Section 7 in this regard is solely against stock acquisitions which may have the effect of substantially lessening competition between the companies acquired. The application
36 of this clause obviously requires a preliminary determination of the area of effective competition between the companies involved before the question of competition between them

[7] These events of 1952 do not appear in the record but Transamerica has asked leave to introduce evidence establishing them and the Board concedes that they have occurred. Brief for respondent, p. 66.

[8] If the business of Bank of America were excluded these percentages, according to Transamerica's Exhibit 271, would be only 7% of deposits and 6.5% of loans.

may be considered. The Board has made such a determination in this case, finding that the business of commercial banks is largely local and confined to the communities in which they operate and in which customers may conveniently visit them. The Board made this finding in subparagraph (f) of Paragraph Seven of its findings of fact, as follows:

"Because of the frequency of need for access to one or more of the services of commercial banks, such banks draw their business largely from areas within which customers may conveniently visit the banks as occasion may require. Thus, in this aspect of their customer relations, commercial banks are largely local, and for the usually needed customer services a distant bank cannot adequately serve a customer. Very large concerns with national credit standing have access to credit from banks in many parts of the country and may also maintain accounts in widely scattered banks. This does not apply, however, to the great multitude of the customers of commercial banks. The smaller concerns, local business enterprises, and ordinary citizens must depend upon their local commercial bank or banks for the financial services peculiar to such banks; for all these customers there is no alternative or substitute, because distantly located banks do not serve or supply their needs."

Likewise it must appear that substantial competition exists between the acquired companies which may be subject to substantial lessening as the result of their acquisition by a common owner.[9] In the present case the Board has made no findings with respect to either present or possible future competition between the individual acquired banks in the communities in which they operate. Indeed, it rejected evidence on this subject offered by Transamerica. Moreover as to 38 of the acquired banks there could hardly be a finding of such competition since none of them is located in the same community as any other acquired bank. While the remaining 10 banks are not eliminated by this geographic test the mere showing of common ownership will not support an inferential finding that competition between them exists and may be lessened.[10]

The Board's ultimate finding on this score was "that the effect of its [Transamerica] holding and use of such stocks may be to substantially lessen competition and restrain commerce in commercial banking in the States of California, Oregon, Nevada, Arizona, and Washington." This finding is deficient in two re-

[9] International Shoe Co. v. Federal Trade Commission, 1930, 280 U. S. 291, 298; Federal Trade Commission v. Thatcher Mfg. Co., 3 Cir. 1925, 5 F. 2d 615, 622, aff. in part, 272 U. S. 554, 560; V. Vivaudou, Inc. v. Federal Trade Commission, 2 Cir. 1931, 54 F. 2d 273. Compare United States v. Columbia Steel Co., 1948, 334 U. S. 495, 527.

[10] Temple Anthracite Coal Co. v. Federal Trade Commission, 3 Cir. 1931, 51 F. 2d 656; Pennsylvania R. Co. v. Interstate Commerce Commission, 3 Cir. 1933, 66 F. 2d 37.

spects. It is not directed to competition between the acquired banks, the only competition with which Section 7 is concerned. And it sets up a five-state area of competition for which there is no support in the evidence and which is inconsistent with its own specific finding on this point to which we have already referred. So far as concerns the portion of this finding that the effect of these stock acquisitions may be to restrain commerce in commercial banking in the five-state area it is sufficient to say that the Board did not refer to it in this court either in its brief or in oral argument and evidently does not rely upon it.

We turn then to the consideration of the Board's conclusion that Transamerica's bank stock acquisitions violate Section 7 of the Clayton Act because they may tend to create a monopoly in the commercial banking business in the five state area. The Board states its theory thus: Because of governmental restrictions
38 there are only a limited number of commercial banking offices serving the public in any designated area. Principally as a result of hundreds of acquisitions of independent banks one small banking institution organized in San Francisco in 1904 has been built into a vast integrated network of 645 banks and branches now located over a five-state area. These offices represent 40.9% of all commercial banking offices in that area, and they hold 38.8% of all deposits and 49.9% of all commercial loans therein. Despite the tremendous growth of population and economic activity in that area in recent years, the total number of all banking offices therein has decreased since Transamerica was organized in 1928, while the number of banking offices in the Transamerica group has increased during that time. By every applicable standard in assessing the economic power of an integrated group of banks, that of the Transamerica group has been always on the increase. Furthermore, Transamerica is constantly seeking to acquire additional banks and, unless restrained, intends to do so. Because the Transamerica acquisitions have systematically and continuously eliminated competition over the years, and because its total of controlled banking offices has been steadily increasing as a result of such acquisitions, thus demonstrating a patent, not to say inexorable, movement in the direction of monopoly, the Board concludes that the cumulative effect of such acquisitions may be to create a monopoly within the five-state area.

It will be seen that the Board paints with an exceedingly broad brush. By cumulating the acquisition of banks by Transamerica throughout the five-state area and including Bank of America (in which Transamerica no longer has any stock interest) the Board shows the growth of a banking group which, it asserts, is moving toward a monopoly in banking in the five states. We agree that this quantitative analysis discloses a tremendous concentration

of banking capital, and thereby of economic power, in the hands of the Transamerica group which may be unwise and against sound public policy. It may well be in the public interest to curb the growth of this banking colossus by appropriate legislative or administrative action. This, however, is not for us to decide. Our only question is whether the theory upon which the Board based its decision meets the legal tests which are required under Section 7 of the Clayton Act to determine whether Transamerica's bank stock acquisitions tend to create a monopoly of commercial banking. We are compelled to agree with Transamerica that it does not do so.

A monopoly involves the power to raise prices or to exclude competition when the monopolist desires to do so.[11] Obviously, under Section 7 it was not necessary for the Board to find that Transamerica has actually achieved monopoly power but merely that the stock acquisitions under attack have brought it measurably closer to that end. For it is the purpose of the Clayton Act to nip monopoly in the bud. Since by definition monopoly involves the power to eliminate competition a lessening of competition is clearly relevant in the determination of the existence of a tendency to monopolize. Accordingly in order to determine the existence of a tendency to monopoly in the commercial banking or any other line of business the area or areas of existing effective competition in which monopoly power might be exercised must first be determined. The Board in this case apparently regards that area as comprising the five states of California, Oregon, Nevada, Arizona, and Washington. This, however, is inconsistent with the Board's own finding that the local community in which a commercial bank is located is its area of competition. Moreover it is a mere assumption by the Board wholly unsupported by evidence. No valid reason is shown for taking five states rather than one, the seven included in the federal reserve district or all 48. The Board's conclusion of a tendency to monopoly in the five-state area, therefore, fails for want of a supporting finding that the five states constitute a single area of effective competition among commercial banks and flies in the face of its own finding that the local community is the true competitive banking area.

We, of course, do not hold that no tendency to monopoly by Transamerica in commercial banking could be shown in any of the competitive areas in which its acquired banks operate. It may well be that in some of these areas Transamerica through the acquisition of banks has brought about a substantial lessening in competition and in that and other ways has moved measurably toward monopoly power in those particular areas. The Board has

[11] American Tobacco Co. v. U. S., 1946, 328 U. S. 781, 811.

made no such findings, however, nor has it made appropriate supporting findings as to the factors which an analysis of the market would disclose to be relevant to the determination of these questions. It has been held that such findings are necessary under Section 7.[12]

The Board does not deny that the cases which have been decided under Section 7 have interpreted and applied that section as we do here. But it asserts that these cases have all been overruled by the opinion of the Supreme Court in Standard Oil Co. v. United States, 1949, 337 U. S. 293, in which Section 3 of the Clayton Act was held violated upon the mere showing that by the use of the exclusive dealing contracts there involved competition had been foreclosed in a substantial share of the line of commerce affected. We do not think that the Standard Oil case has any such effect. Section 3 of the Clayton Act deals with exclusive dealing contracts, not with stock acquisitions. The use of exclusive dealing contracts per se lessens competition, however, so that the fact of lessening need not be proved. For one who agrees to purchase all his requirements from a single seller is legally barred from purchasing them from anyone else and is consequently eliminated en-
41 tirely from the competitive market. In order to establish a substantial lessening of competition in such a case, therefore, it is only necessary in addition to prove that the sales covered by the exclusive dealing contracts amount to a substantial portion of the total involved in the competitive market area.[13] This is precisely what was held in the Standard Oil case.

The situation with respect to corporate stock acquisitions, the subject matter of Section 7, is wholly different, however. For the acquisition of the stock of two or more corporations engaged in interstate commerce is not per se a violation of the section.[14] On the contrary such acquisition is a violation only if its effect may be in fact to substantially lessen competition between such corporations, to restrain commerce or to tend to create a monopoly. Otherwise the acquisition is entirely lawful, so far as Section 7 is concerned. It necessarily follows that under Section 7, contrary to the rule under Section 3, the lessening of competition and the tendency to monopoly must appear from the circumstances of the particular case and be found as facts before the sanctions of the statute may be invoked. Evidence for mere size and participation in a substantial share of the line of business involved, the "quan-

[12] International Shoe Co. v. Federal Trade Commission, 1930, 280 U. S. 291, 298–299; Aluminum Co. of America v. Federal Trade Com'n, 3 Cir. 1922, 284 F. 401, cert. den. 261 U. S. 616; V. Vivaudou, Inc. v. Federal Trade Commission, 2 Cir. 1931, 54 F. 2d 278.

[13] In the Standard Oil case Justice Frankfurter said: "Since it is the preservation of competition which is at stake, the significant proportion of coverage is that within the area of effective competition." 337 U. S. 293, 299–300, note 5.

[14] International Shoe Co. v. Federal Trade Commission, 1930, 280 U. S. 291, 298.

titative substantiality" theory relied on by the Board, is not enough.

The same considerations serve to distinguish this case from International Salt Co. v. U. S., 1947, 332 U. S. 392, upon which the Board also relies. For that case involved contracts tying sales of an unpatented product, salt, to a patented one, a machine for its use. These contracts, the court pointed out, closed against competition the market for salt by those persons who bought the machines. The contracts therefore per se violated the antitrust laws as to the salt to be purchased under the contracts regardless
42 of its amount. The Supreme Court so interpreted the case in United States v. Columbia Steel Co., 1948, 334 U. S. 495, 522.

We conclude that since the Board failed to find the facts as to lessening competition and tendency to monopoly in the areas of effective competition actually involved, its order is unsupported by the necessary findings and cannot stand.

Since we hold that the Board's order must be set aside we need not discuss Transamerica's contentions that it was denied a fair hearing by the manner in which the proceedings were conducted by the Board's hearing officer and by the inability of the Board to provide it with subpoenas to compel the attendance of witnesses and the production of documents. Nor need we consider Transamerica's application for leave to introduce additional evidence to prove that it has now disposed of the remainder of its Bank of America stock and that following the death of L. M. Giannini the two corporations have no longer a common director. For if the Board should decide, in the light of this opinion, to proceed further against Transamerica that corporation will, of course, have full opportunity to introduce this and all other relevant evidence to which its application for leave was directed.

The order of the Board of Governors of the Federal Reserve System will be set aside.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

43 UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10768

TRANSAMERICA CORPORATION, PETITIONER

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT

Judgment

Present: MARIS, GOODRICH, and KALODNER, *Circuit Judges.*

This cause came on to be heard on the transcript of record from the Board of Governors of the Federal Reserve System, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the order of the Board of Governors of the Federal Reserve System be, and it is hereby set aside.

Attest:

HARRIET G. HUMPHREYS,
Deputy Clerk.

JULY 16, 1953.

[Received and filed July 16, 1953. Ida O. Creskoff, Clerk.]

44 UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10768

TRANSAMERICA CORPORATION, PETITIONER

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT

Present: MARIS, GOODRICH, and KALODNER, *Circuit Judges.*

Upon consideration of the application by petitioner for leave to adduce additional evidence, as amended, and after hearing,

It is ordered that the application be, and it is hereby denied, without prejudice.

By the Court,

MARIS, *Circuit Judge.*

JULY 17, 1953.

[Received and filed July 17, 1953. Ida O. Creskoff, Clerk.]

45 No. 10768

TRANSAMERICA CORPORATION, PETITIONER ON REVIEW,

v.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, RESPONDENT ON REVIEW

Mandate

[Received and filed August 6, 1953. Ida O. Creskoff, Clerk.]
[Copy.]

46 JULY 16, 1953.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Board of Governors of the Federal Reserve System:

GREETING:

Whereas, lately in the Board of Governors of the Federal Reserve System before you or some of you, in a cause between Transamerica Corporation, Petitioner, Petitioner on Review and Board of Governors of the Federal Reserve System, Respondent (Respondent on Review) an order was entered by the Board of Governors of the Federal Reserve System on March 27, 1952, which order is of record in the office of the Board of Governors of the Federal Reserve System, to which reference is hereby made, and the same is hereby expressly made a part hereof,
as by inspection of the transcript of record of the said Board of Governors of the Federal Reserve System which was brought into the United States Court of Appeals for the Third Circuit by virtue of a petition by Transamerica Corporation agreeably to the Act of Congress, in such case made and provided, more fully and at large appears.

And whereas, the said cause came on to be heard before the said United States Court of Appeals for the Third Circuit, on the said transcript of record, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this court that the order of the Board of Governors of the Federal Reserve System be, and it is hereby set aside.

47 You, therefore, are hereby commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said petition notwithstanding.

Signed and sealed this 6th day of August in the year of our Lord one thousand nine hundred and fifty-three.

IDA O. CRESKOFF,
Clerk, United States Court of Appeals for the Third Circuit.

48 I, Ida O. Creskoff, Clerk of the United States Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original proceedings in this court in the case of Transamerica Corporation, Petitioner, vs. Board of Governors of the Federal Reserve System, No. 10768, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 24th day of September in the year of our Lord one thousand nine hunderd and fifty-three, and of the Independence of the United States the one hundred and seventy-eighth.

[SEAL] IDA O. CRESKOFF,
Clerk of the United States Court of Appeals, Third Circuit.

49 IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. ——

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, PETITIONER

v.

TRANSAMERICA CORPORATION

Stipulation

It is hereby stipulated and agreed, by and between counsel for the respective parties to the above-entitled cause, that, for the purpose of the petition for writ of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case on the merits, the printed record shall consist of the Joint Appendix and the following portions of the proceedings had before the United States Court of Appeals for the Third Circuit:

1. Petition to review and set aside the order of the Board of Governors of the Federal Reserve System—filed May 27, 1952.

2. Application for leave to adduce additional evidence—filed May 27, 1952.

3. Amendment to application for leave to adduce additional evidence—filed November 24, 1952.

4. Opinion—filed July 16, 1953.

5. Judgment setting aside the order of the Board of Governors of the Federal Reserve System—filed July 16, 1953.

6. Order denying application for leave to adduce additional evidence—filed July 17, 1953.

7. Order of July 16, 1953, setting aside the order entered on March 27, 1952, by the Board of Governors of the Federal Reserve System.

8. Clerk's certificate.

It is further stipulated and agreed that, in addition to the joint appendix, petitioner will cause the Clerk of the United States Court of Appeals to certify up to the Supreme Court of the United States the entire proceedings, and that the parties hereto may, if they deem it necessary, refer in their briefs and argument to any portions of the proceedings omitted from printing.

Robert L. Stern,
ROBERT L. STERN,
Acting Solicitor General,
Counsel for Petitioner.

GERHARD A. GESELL,
Counsel for Respondent.

OCTOBER 2, 1953.

U. S. GOVERNMENT PRINTING OFFICE: 1953

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